

HB 773 -- EDUCATION SAVINGS ACCOUNT PROGRAM

SPONSOR: Dogan

This bill establishes the "Education Savings Account Program."

DEFINITIONS

This bill defines:

- (1) "Account-granting organization" as a private, nonprofit organization that complies with the requirements of the program, receives contributions to fund education savings accounts, and administers and allocates funds to education savings accounts;
- (2) "Curriculum" as a complete course of study for a particular content area or grade level including, without limitation, any required supplemental materials and associated online instructions;
- (3) "Education Savings Account (ESA)" as the account to which funds are allocated by an account-granting organization to the parents of eligible students in order to pay for qualified education expenses in accordance with the requirements and conditions of the program;
- (4) "Education Service Provider" as a person or organization that receives payments from an ESA in exchange for authorized expenditures. An education service provider includes: a private school; a private online learning program or course; a state institution of higher education; a community college; a technical college; a private tutor; a provider of educational materials, curriculum, therapies, or services;
- (5) "Eligible Student" as any elementary or secondary school student who is a resident of this state and who attended any public school, including any public charter school, at any time within one year immediately before the student's initial participation in the program;
- (6) "Private tutoring" as tutoring services provided by state-certified teachers or a person or institution accredited as a tutor or tutoring facility by a state, regional, or national accrediting organization;
- (7) "Program" as the ESA program; and
- (8) "Taxpayer" as an individual subject to the state income tax imposed in Chapter 143, RSMo; an individual, firm, partner in a firm, corporation, or shareholder in an S corporation doing

business in this state and subject to the state income tax imposed by Chapter 143; or an express company that pays an annual tax on its gross receipts in this state under Chapter 153, which files a Missouri income tax return and is not a dependent of any other taxpayer (Section 135.2010).

QUALIFYING EXPENSES

The bill requires parents participating in the program to use the funds deposited in their eligible student's account only for qualifying education expenses. The following are qualifying expenses:

- (1) Tuition and fees at a private school or private online learning program;
- (2) Instructional materials;
- (3) Private tutoring;
- (4) Computers or other technological devices that are used to help meet a student's educational needs and that are approved by an organization;
- (5) Fees for nationally standardized assessments, AP or similar courses, state-recognized industry certification examinations, and any examination related to college or university admission;
- (6) Fees for summer education programs and specialized after-school education programs;
- (7) Services provided by a public school district including, without limitation, extracurricular programs and individual classes;
- (8) Contributions to a college savings account including, but not limited to, a Coverdell ESA, as establishing under 26 U.S.C. Section 530, for the benefit of the participating student;
- (9) Educational services and therapies that are approved by the organization including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;
- (10) Tuition and fees at a state institution of higher education, community college, or technical college;
- (11) Instructional materials required for college or university courses;

(12) Transportation fees for a participating student to travel to and from a provider not exceeding \$750 each school year; and

(13) Fees for management of the account by financial firms authorized by the State Treasurer.

This bill prohibits an organization from depositing funds into an ESA in excess of the statewide average spent by the state on each public school student except for a student with a disability will have a limit of the state wide average spent by the state on each public school student with an individualized education program (IEP). ESA funds may not be refunded, rebated, or shared with a parent or student. Any refunds for services paid with ESA funds must be credited directly to the ESA. Personal deposits into ESAs are prohibited. ESA funds used for qualifying expenses do not constitute taxable income to the parent or the student (Section 135.2015).

APPLYING TO AN ACCOUNT-GRANTING ORGANIZATION

The bill allows a parent to apply to an organization to establish an ESA for an eligible student. An organization may approve such application only after verifying that the parent's student is eligible and an agreement is entered into. An organization can only approve an application if funds are available. As part of the agreement with the organization the parent agrees: to use the funds in the ESA only for qualifying expenses; to provide, at a minimum, an education for the eligible student in at least the subjects of reading, grammar, mathematics, social students, and science; and, not to enroll his or her eligible student in a public school without notification as required under Section 135.2045. If notice is given by a parent, the organization must annually renew a students ESA if funds are available (Section 135.2020).

TAX CREDIT

Beginning on or after January 1, 2018, a taxpayer who makes a contribution to an organization may claim credit against tax otherwise due under Chapters 143 and 153, other than taxes withheld under Sections 143.191 to 143.265, in an amount equal to the amount the taxpayer contributes during the tax year for which the credit is claimed. Any unused tax credits under this program may be carried forward for three consecutive tax years after the credit was earned. Such carry forward must be applied for by the taxpayer wishing to do so. The tax credit is not transferable unless all of the assets of a taxpayer are conveyed, assigned, or transferred in the same transaction. This credit is in lieu of any deduction for a contribution made to an organization under 26 U.S.C. Section 170 taken for state tax purposes.

The tax credit will have a \$30 million cap per year for the cumulative amount of credits claimed. The credits will be issued in the order applications are received. A taxpayer may rescind all or part of the taxpayer's allocated tax credit, as specified in the bill. Applications for the tax credit must be submitted to the treasurer. The treasurer and the Department of Economic Development must develop a cooperative agreement to assist in administering the tax credit (Section 135.2025).

ACCOUNT-GRANTING ORGANIZATION

This bill requires an organization that seeks to become an account-granting organization to apply with the treasurer for initial certification or renewal by March 1 before the school year for which the organization intends to fund ESAs. The requirements of the applications for initial certification and renewal are specified in the bill. Within 60 days of receipt of the application the treasurer will certify the organization if it meets the established requirements.

The bill requires each organization to ensure that at least 90% of their revenue from tax-credit-eligible contributions is allocated to ESAs. An organization must maintain separate accounts for ESA funds and funds for operating or administrative expenses. Any interest accrued from contributions must be allocated to ESAs.

This bill specifies that each organization must create a standard application process for parents of students to use to establish their student's eligibility for the program and the application must be readily available to interested families. An organization must provide parents with a written explanation of the allowable uses of ESAs, the responsibilities of the parents, and the duties of the organization.

The bill allows, upon prior notification to the treasurer, an organization to transfer funds to another qualified organization if additional funds are required to meet the demands for ESAs or if the transferring organization determines it cannot continue operating. The rules of such transfers are specified in the bill.

This bill requires the treasurer to maintain a public registry of current certified organizations on its website. The bill allows the treasurer to bar a provider from the program if the treasurer establishes that the provider has routinely failed to provide students with the educational services funded by the ESA and has intentionally and substantially misrepresented information or failed to refund any overpayment in a timely manner.

The bill authorizes the treasurer to make any parent of an eligible student ineligible for the program in the event of substantial misuse of funds in the account. The treasurer has the power to audit an account and refer cases of substantial misuse of funds to law enforcement agencies for investigation if evidence of fraudulent use is obtained. The treasurer shall establish rules to allow a participating student to return to his or her public school districts at any time. The treasurer may conduct an investigation of a violation by an organization, as specified in the bill.

This bill allows an organization to contract with private financial institutions to manage ESAs. Each organization must develop a system for pay of services, as specified in the bill, and may not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses. An organization may deduct up to 3% from each ESA to pay reasonable fees to private financial institutions. An organization must roll over any unused funds in an ESA account to the following year.

The bill requires an organization to continue making transfers into an ESA until:

- (1) The parent does not apply to renew the ESA;
- (2) The organization determines the student is no longer eligible.
- (3) The parent fails to comply with the agreement;
- (4) The student enrolls in a public school;
- (5) The student graduates from high school; or
- (6) The state treasurer bars a student from the program for substantial misuse of ESA funds.

This bill requires that if a student enrolls in a public school the parent must immediately notify the organization. The organization will place the ESA in inactive status for a maximum period of one school year and during that time the ESA funds will be frozen in place. The organization will return the ESA to active status after one school year if the parent notifies the organization that the student is no longer enrolled in a public school and the student is still otherwise eligible. If the student remains in public school or other ineligible institution the ESA will be closed.

An ESA will remain active and useful until:

- (1) A student graduates from a postsecondary institution;

- (2) Four consecutive years after high school graduation in which the student is not enrolled in a postsecondary institution;
- (3) A student turns 25 years of age; or
- (4) Two consecutive years of account inactivity.

Revoked funds will revert to the organization that established the ESA.

The bill requires the treasurer to produce an annual report, accessible via a state website, that aggregates the data obtained from the annual report submitted by each organization for renewal (Sections 135.2030, 135.2035, 135.2040, 135.2045, and 135.2050).

PARTICIPATING PRIVATE SCHOOLS

This bill specified that all participating private schools must:

- (1) Comply with all health and safety laws or codes that apply to private schools;
- (2) Hold a valid occupancy permit if required by a municipality;
- (3) Certify that they comply with the nondiscrimination policies set forth in 42 U.S.C. Section 1981;
- (4) Conduct criminal background checks on employees and exclude from employment anyone not permitted by state law to work in a private school and exclude from employment anyone that might reasonably pose a threat to the safety of students.

The bill specifies that to ensure that funds are spent appropriately private schools must provide parents with a receipt for qualifying expenses and demonstrate its financial viability to repay any funds that might be provided from ESAs if the school receives \$50,000 or more a year, as specified in the bill. The achievement of the program is measurable through a series of requirements of parents and the state or an organization chosen by the state, as specified in the bill.

Participating private schools are autonomous and not agents of the state and as such the state will not regulate the educational program of a participating private school or provider that accepts ESA funds nor does the creation of the program expand the regulatory authority of the state, state treasurer, or any school district to impose any additional regulations of private schools or providers beyond those necessary to enforce the requirements of the program.

In any legal proceeding challenging the application of Sections 135.2005 to 135.2070 to a provider, the state bears the burden of establishing that the law is necessary and does not impose any undue burden on the provider.

School districts must provide a provider that has admitted an eligible student with a complete copy of the students school records (Sections 135.2055 and 135.2060).

If any part of the ESA program is challenged in state court as violating either the state or federal constitutions, parents of eligible and participating students will be permitted to intervene in such lawsuit for the purposes of defending the program's conventionality.

These provisions will sunset December 31, six year after the effective date.